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the other fully retracted, the aircraft [wa]s still controllable and maneuverable during all normal flight regimes." The report did indicate, however, that considerable more pilot technique was required. Nonetheless, the report concluded that the Beech Duke complied with Section 23.701.

As part of an FAA DOA audit, the FAA reviewed the flight test report provided by HBC and found it to be satisfactory. The FAA concluded that Beech Duke exhibited safe flight characteristics with an asymmetric flap condition, and thus complied with Section 23.701.

Notwithstanding the FAA's approval of the flight test report, Plaintiffs contend that HBC "manipulated" the flight tests in order to conceal alleged "inadequacies" in the controllability of the Beech Duke in extreme asymmetric flap deployment scenarios. In support of this contention, Plaintiffs identify several procedures employed by HBC during flight testing that it claims were intended to achieve favorable results. Such procedures include: loading the aircraft to nearly maximum gross weight; deviating from the flap configuration specified in the flight test plan; and conducting the flight test in a steady state condition. By employing such procedures, Plaintiffs argue that HBC knowingly misrepresented that the Beech Duke was controllable in an asymmetric flap configuration.

The Court finds that Plaintiffs' "misrepresentation claim" is nothing more than criticism of the testing procedures employed by HBC during its flight testing. The fact that Plaintiffs would have conducted additional or different testing is irrelevant for purposes of a misrepresentation claim. "[D]isagreements over what tests should have been performed or what caused crashes do not establish knowing misrepresentation."[39]

The Court finds no evidence of misrepresentation in HBC's communications with the FAA. To the contrary, the record establishes that HBC engaged in an ongoing and open dialogue with the FAA prior to commencing flight testing. The extensive communication between the FAA and HBC detail requests from the FAA to conduct flight testing, and HBC's responses. Plaintiffs' experts have failed to identify any information that HBC misrepresented to the FAA during this series of correspondence.

Further, the Court finds no evidence that HBC knowingly misrepresented, concealed or withheld required information from the FAA concerning the flight testing. The record establishes that once testing commenced, HBC provided the FAA with a detailed plan outlining how the flight test would be conducted. Although the flight plan subsequently was altered, this change clearly was indicated in the flight report provided to the

[39] *Burton*, 254 P.3d at 787 n.9. *See also Rickert v. Mitsubishi Heavy Indus., Ltd.*, 923 F.Supp. 1453, 1458 (D. Wyo. 1996).

FAA – a report which the FAA deemed "satisfactory." Therefore, Plaintiffs' claim that HBC misrepresented information regarding how the actual flight test was conducted is without merit.

In accepting the results of HBC's flight testing, the FAA implicitly acknowledged that it found the testing procedures employed appropriate. Had the FAA believed that the nature and extent of testing were insufficient, it could have required additional or different testing – but it did not. Even Plaintiffs' experts concede that it was the "FAA's call" as to whether the testing procedures employed by HBC were sufficient. The FAA reviewed the flight test report, which identified the testing procedures, and deemed it satisfactory.

HBC Demonstrated Compliance with 14 C.F.R § 21.3

Pursuant to Section 21.3, a TC holder – here, HBC – has a continuing obligation to report any failures, malfunctions, or defects in any product manufactured by it that it determines could result in specified safety risks.[40] Specifically, a TC holder is required to report "[a]ny structural or flight control system malfunction, defect, or failure which causes an interference with normal control of the aircraft or which derogates the flying qualities."[41]

[40] 14 C.F.R. § 21.3.
[41] 14 C.F.R. § 21.3(c).

A TC holder, however, is exempt from reporting failures, malfunctions, or defects that previously have been reported to the FAA.[42]

The FAA established the Service Difficulty Program in an effort to provide assistance to owners, operators, manufacturers, and the FAA in identifying problems encountered during aircraft service.[43] Under this program, the FAA receives relevant information from a variety of sources, including FAA inspectors, owners, operators and certified repair stations.[44] The information collected is then published by the FAA in the form of SDRs.[45]

The undisputed record in this case establishes that the FAA received over 100 reports, via the FAA's Service Difficulty Program, concerning problems with the Beech Duke's flap system. Additionally, as the Court previously has noted, HBC and the FAA engaged in extensive communications regarding the occurrence of an asymmetric flap condition in the Beech Duke. The regulations do not require HBC to re-report such a condition to the FAA each time it occurs. Moreover, "multiple reportings

[42] 14 C.F.R. §§ 21.3(d)(1)(ii), (iii).
[43] *Aerospace, Inc. v. Slater*, 142 F.3d 572, 574 (3d Cir. 1998).
[44] *Id.*
[45] *Id.* at 575.

can cause serious problems for the FAA, which has a limited number of employees to handle them."[46]

The Court finds that because the FAA was aware of issues with the Beech Duke's flap system, HBC was under no obligation to re-report each subsequent issue that arose with respect to the asymmetric flap condition. A manufacturer is not required to provide the FAA with information the manufacturer knows the FAA has received from another source.[47]

New Parts Exception

Plaintiffs next seek respite under GARA's new parts exception. Pursuant to Section 2(a)(2) of GARA, the 18-year repose period can restart when a new part or component is installed in a general aviation aircraft. In order to trigger Section 2(a)(2)'s rolling provision, Plaintiffs must: (1) identify the new part; (2) demonstrate that the part was placed on the Subject Aircraft within 18 years of the accident; (3) establish that the replacement part was defective and caused Plaintiffs' injuries; and (4) establish that HBC manufactured the new part.[48]

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[46] *Burton v. Twin Commander Aircraft LLC*, 254 P.3d 778, 790 (Wash. 2011).
[47] *See* 14 C.F.R. §§ 21.3(d)(1)(ii).
[48] *See South Side Trust and Sav. Bank of Peoria v. Mitsubishi Heavy Indus., Ltd.*, 927 N.E.2d 179, 192-93 (Ill. App. Ct. 2010).

HBC, as the movant, has the burden to show that GARA's statute of repose is applicable.[49] If HBC satisfies its burden, the burden shifts to Plaintiffs to show facts that operate to restart the limitation period.[50] In other words, this rolling provision applies if Plaintiffs "can show that a new item replaced an item either originally in the aircraft or added to the aircraft and the new item was also a cause of the claimed damages."[51]

Plaintiffs' Contentions

Plaintiffs argue that at some point between 1995 and 2001, HBC replaced the Subject Aircraft's 90° drive for the right-hand flap ("90° drive") in accordance with the manufacturers' recommendations. This "new" part, Plaintiffs claim, failed during Hart's flight, causing the plane to become uncontrollable and crash. Because this new part was allegedly placed in the Subject Aircraft within 18 years of the accident, Plaintiffs seek to hold HBC liable under GARA's rolling provision.

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[49] *Id*. at 193; *Willett v. Cessna Aircraft Co.*, 851 N.E.2d 626, 635 (Ill. App. Ct. 2006).
[50] *Agape Flights, Inc. v. Covington Aircraft Engines, Inc*., 2011 WL 2560281, at *5 (E.D. Okla. 2011); *Willett*, 851 N.E.2d at 636.
[51] *South Side Trust*, 927 N.E.2d at 193 (citing *Hiser v. Bell Helicopter Textron Inc*., 111 Cal.App.4th 640, 650 (2003)).

Overhauled Part Insufficient to Trigger GARA

In order to invoke GARA's rolling provision, Plaintiffs must prove, *inter alia*, that a "new" part replaced an old part on the Subject Aircraft.[52] Contrary to Plaintiffs' contention, an overhauled part does not constitute a "new" part.[53] As the court in *Butchkosky* observed:

> A holding that would toll the statute of repose on a product on account of an overhaul of a critical component of that product would effectively eviscerate the statute of repose as it applied to many types of products. For example, aircraft are required by statute to be routinely overhauled, and certain critical parts must be repaired or replaced on a regular basis. If every time a critical component was overhauled, or even replaced, the statute of repose began anew thus permitting an individual to sue for a design flaw, then the manufacturer of the aircraft would never be afforded the protection of the statute of repose....[54]

Here, Plaintiffs have failed to present *any* evidence demonstrating that the 90° drive on the Subject Aircraft's right flap's was ever replaced with a "new" part. Plaintiffs were unable to produce all of the Subject Aircraft's maintenance log books – which would have detailed any work performed on the flap system – for the relevant 18-year period. Plaintiffs only produced log books for the first 6 years of the relevant time period, none of which indicated that the 90° drive had been replaced. Plaintiffs did not produce

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[52] *Crouch v. Teledyne Continental Motors, Inc*., 2011 WL 2517221, at *4 (S.D. Ala.); *Hinkle v. Cessna Aircraft Co*., 2004 WL 2413768, at *9 (Mich. Ct. App.).
[53] *Hiser*, 111 Cal.App.4th at 651; *Butchkosky v. Enstrom Helicopter Corp*., 855 F.Supp. 1251, 1255 (S.D. Fla. 1993); *Willett*, 851 N.E.2d at 635; *Hinkle*, 2004 WL 2413768, at *8; *Robinson v. Hartzell Propeller Inc*., 326 F.Supp.2d 631, 663 (E.D. Pa. 2004).
[54] *Butchkosky*, 855 F.Supp. at 1255.

any other records, documents, or invoices from the relevant time period to demonstrate that the 90° drive had been replaced.

Plaintiffs, instead, rely solely on the testimony of Robert Pinto, the Subject Aircraft's principal maintenance provider, to prove that the 90° drive was replaced. At his deposition, Pinto testified that the flap systems had either been "overhauled or replaced." After this general statement, Pinto then identified the specific parts of the flap system that had been overhauled or replaced: the actuators, cables and flap motor. Notably, Pinto did not identify the 90° drives as parts that had been replaced.

Moreover, Pinto was unable to discern whether the 90° drive, which he claimed had been replaced, was an overhauled part or a new part. As the Court already has noted, the overhaul of an allegedly defective part does not trigger GARA's new parts exception. As such, the Court finds that Plaintiffs have failed to present sufficient evidence demonstrating that the 90° drive was replaced with a "new" part.

Only Manufacturer of Replacement Part Liable

Plaintiffs have failed to establish a *prima facie* case that HBC manufactured or sold the 90° drive that allegedly was replaced. It is well-settled that only the *actual* manufacturer or seller of the replacement part can

be held liable under GARA's new parts exception.[55] Therefore, the manufacturer of the aircraft cannot be held liable under this exception unless it also manufactured the relevant replacement part.

Plaintiffs have presented no evidence that HBC manufactured, installed, or sold the allegedly replaced 90° drive. It is undisputed that HBC had not dealt with the Subject Aircraft in 37 years. Rather, Plaintiffs seek to hold HBC liable by virtue of the fact that HBC, as the TC holder, manufactured the Subject Aircraft. According to Plaintiffs: "The FAA's definition of 'manufacturer' does not focus on who physically builds or supplies the particular item. Instead, the FAA focuses on the entity causing the product to be produced."

Plaintiffs' attempt to broaden the scope of the term "manufacturer" to include TC holders thwarts the legislative intent behind GARA to limit the tail of liability applicable to the manufacturers of general aviation aircraft.[56] As the *Sheesley* Court observed: "Congress meant what it said – the

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[55] *Sheesley v. The Cessna Aircraft Co.*, 2006 WL 1084103, at *4 (D. S.D. 2006); *Burroughs v. Precision Airmotive Corp*., 78 Cal.App.4th 681, 691 (2000); *Campbell v. Parker-Hannifin Corp*., 69 Cal.App.4th 1534, 1545-46 (1999); *Pridgen v. Parker Hannifin Corp*., 905 A.2d 422, 426-27 (Pa. 2006); *Stewart v. Precision Airmotive, LLC*, 7 A.3d 266, 275 (Pa. Super. Ct. 2010).

[56] *Sheesley*, 2006 WL 1084103, at *6. *See also Pridgen*, 905 A.2d at 427 ("Because we believe that the status of type certificate holder and/or designer fall under the umbrella of manufacturer conduct for purposes of GARA, it would wholly undermine the general period of repose if original manufacturers were excepted from claims relief for replacement parts under the rolling provision by virtue of that status alone.")

provision rolls the repose period for a claim against the manufacturer of a defective part."[57] Because Plaintiffs have failed to establish a *prima facie* case that HBC manufactured or sold the 90° drive that was allegedly replaced, the Court finds GARA's "new parts" exception inapplicable.

Warranty Exception

Plaintiffs' Contentions

Plaintiffs seek to impose liability upon HBC under GARA's "warranty exception." Specifically, Plaintiffs contend that HBC's delivery of the airworthiness certificate to the first purchaser constituted an express warranty, not preempted by GARA. This warranty, Plaintiffs claim, provided that the aircraft "ha[d] been inspected and found to conform to the type certificate … to be in condition for safe operation…."

No Express Written Warranty Created

Pursuant to GARA Section (2)(b)(4), GARA's statute of repose does not apply "to an action brought under a written warranty enforceable under law." Contrary to Plaintiffs contention, however, the airworthiness certificate does not constitute a written warranty under GARA.[58] If the Court adopted Plaintiffs' interpretation of the warranty exception, GARA's

[57] 2006 WL 1084104, at *6.
[58] *See Bianco v. Cessna Aircraft Co*., 2004 WL 3185847, at *8 (Ariz. Ct. App. 2004).

statute of repose would never apply. Such a result clearly was not contemplated by Congress in enacting GARA.

CONCLUSION

The application of the GARA statute of repose, and any exception to GARA's limitation bar, are matters of law.[59]

The Court finds that HBC has met its initial burden of demonstrating that the GARA 18-year statute of repose is implicated. Viewing all facts and inferences in the light most favorable to Plaintiffs, the Court finds that Plaintiffs have failed to establish a *prima facie* case that either GARA's knowing misrepresentation exception or new parts exception applies. The Court further rules that there is no express warranty created by the airworthiness certificate.

THEREFORE, Defendant Hawker Beechcraft Corporation's Motion for Summary Judgment is hereby **GRANTED.** The General Aviation Revitalization Act statute of repose bars this action.

[59] *See Mason v. Schweizer Aircraft Corp.*, 653 N.W.2d 543, 553 (Iowa 2002).

Plaintiff's Motion for Judgment on the Pleadings is hereby **DENIED AS MOOT.**

IT IS SO ORDERED.

/s/ *Mary M. Johnston*
The Honorable Mary M. Johnston